



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/168884

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by The Management Group (TMG) to discontinue eligibility under the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on October 27, 2015, by telephone. A hearing set for October 21, 2015 was rescheduled by the Division of Hearings and Appeals.

The issue for determination is whether the agency correctly sought to close petitioner's IRIS case due to billing discrepancies.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
TMG
1 S. Pinckney St., Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for IRIS since prior to August, 2013. In August, 2013, he hired his niece A.P. as his primary caregiver. In February, 2014 petitioner's monthly IRIS allowance was overbilled, almost all of it due to A.P.'s reported hours. After that petitioner's IRIS services were billed over budget in all but four months.

3. Agency personnel had at least four conferences with petitioner and A.P. concerning the need to keep within the budget and to provide only necessary services. Overbilling continued to occur.
4. On June 29, 2015 an IRIS representative met with petitioner. He admitted at that time that he did not review monthly budget statements but left that to family members. A.P. reported that she would continue to bill the same way because she needed the money.
5. By a notice dated July 30, 2015, the IRIS agency informed petitioner that IRIS eligibility would close effective August 15, 2015 because of misappropriation of IRIS funds.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program. IRIS policies are found online at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>.

IRIS policies allow the program to end a participant's enrollment when fraud by the participant is substantiated. See §7.1A.1 of the IRIS Policy Manual: Work Instructions, a separate manual found at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>. Fraud includes "intentionally performing or billing services improperly, including false claims." IRIS Policy Manual: Work Instructions, §10.1A.1, no. 14. Disenrollment from IRIS does not necessarily mean that the person is ineligible for all Department services; the person might have to apply for Family Care or another program that does not include self-directed services but instead has more involvement from agency case managers to make certain that services are provided and paid for.

The agency provided evidence that after A.P. was hired she regularly overbilled petitioner's account. A number of meetings between IRIS personnel, petitioner, and A.P. were held in which the need to stay within budget was stressed. Nevertheless the overbilling continued until finally, in June, 2015, petitioner admitted that he took no role in the billing process and left it up to A.P., who candidly admitted that she would continue billing as she had before.

At the hearing petitioner asked that his IRIS case be restored and that he be allowed to hire new workers. The problem is that petitioner has shown that he is not able to control his workers. He admitted that he actually plays little part in the direction of his care services, and after all, the whole point of IRIS is to allow the participant to direct his own cares. If he does not do so, then there is no point in being in IRIS. Even during the hearing petitioner did little speaking, instead allowing a family member to be the primary spokesperson.

I conclude that the agency action was correct. As noted, this result does not mean that petitioner has to enter a nursing home. He is eligible for Family Care, a program that provides the same home-based services but under the direction of agency personnel. Since petitioner cannot direct his own care appropriately, he would be much better served by the Family Care program.

CONCLUSIONS OF LAW

The agency correctly closed petitioner's IRIS case because of consistent misappropriation of funds despite ongoing efforts by agency staff to remedy the situation.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

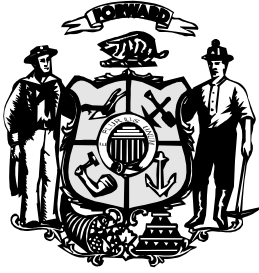
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of November, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2015.

Bureau of Long-Term Support